



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 20, 1998

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR98-0989

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114611.

The Texas Department of Transportation (the "department") received a request for the proposal submitted by Anderson Advertising, Inc. ("Anderson") in RFP number 60115-8-80000. You state that you have released some of the requested information. You claim, however, that three pages of Anderson's proposal, pages 1-3 through 3-3, which reflect employee hourly rates are excepted from required public disclosure by section 552.110. You have submitted the documents at issue for our review.

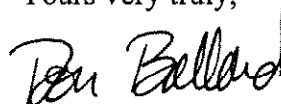
Since the property and privacy rights of third party may be implicated by the release of the requested information, this office notified Anderson about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Anderson responded and argues that the three pages reflecting its employee hourly rates are excepted from required public disclosure. Anderson argues that release of this information would "allow our competitors to unfairly analyze our competitive structure and place other clients' inferred costs in a false comparison." Anderson also argues that release of the information would violate a right of privacy.

After examining the submitted materials, we do not believe that Anderson or the department has established that the information is protected by section 552.110. See Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3; see also Open Records Decision No. 494 (1988) at 6. See generally Freedom of Information Act Guide & Privacy Act Overview (1995) 136-138, 140-141, 151-152 (disclosure of prices is cost of doing business with government); cf. Open Records Decision Nos. 319 (1982), 306 (1982).

Anderson also argues that section 552.101 of the Government Code excepts the requested information from disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." After reviewing the submitted materials and arguments, we do not believe that the requested information must be withheld based on a right of privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) (common-law privacy); Open Records Decision Nos. 620 (1993) (companies and corporations do not have a right of privacy), 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), cert. denied, 474 U.S. 1062 (1986)) (constitutional privacy). Moreover, we do not find nor does any party point to a statute that would deem the information confidential. We conclude that the information may not be withheld based on section 552.101. Consequently, the requested information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 114611

Enclosures: Submitted documents

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(w/o enclosures)